



TRICARE
MANAGEMENT
ACTIVITY

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
HEALTH AFFAIRS
SKYLINE FIVE, SUITE 810, 5111 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3206

May 4, 2004

MEMORANDUM FOR HIPAA PRIVACY SERVICE REPRESENTATIVES

SUBJECT DOD-DVA HEALTH INFORMATION SHARING

The purpose of this memorandum is to communicate throughout the Military Health System (MHS) when and under which circumstances it is appropriate to share Protected Health Information (PHI) with the Department of Veterans Affairs (DVA) and its components.

The Privacy Office, TRICARE Management Activity (TMA) has been working closely with Privacy Offices at DVA to develop an agreement under which we can share information between DoD and DVA in accordance with the HIPAA Privacy Rule. While we agree that DVA requires a wide range of PHI from the Department of Defense (DoD) in order to properly administer the coordination of care for service members transitioning to the DVA Veterans Health Administration (VHA), any such sharing must be consistent with applicable law and regulation. The Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 prescribes those situations when we, DoD, can share an individual's PHI for the purposes of treatment and further for eligibility and disability determinations. Both the HIPAA Privacy rule and the Privacy Act of 1974 must be complied with in any provision of individually identifiable information, including health information with the DVA and its components. The stricter of these rules must always be met.

DoD can release data to the DVA under the following conditions:

1. Provision of PHI to the VHA from DoD for treatment:
 - o The HHS HIPAA Privacy Rule, 45 CFR §164.506 (c) (2) states that "a covered entity may disclose protected health information for treatment activities of a health care provider. This provision allows DoD to provide PHI to facilitate the seamless transition of veterans from the DoD to the DVA/VHA at the point when a determination has

been made for DVA/VHA follow-on care in reasonable anticipation of discharge to the DVA/VHA. Sharing of PHI between DoD and VHA for the purpose of treatment can be accomplished at the point where a decision is made to seek care for an individual in the DVA/VHA.

- The HHS HIPAA Privacy Rule, 45 CFR §164.501 defines treatment as “the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.” It is at this time that the individual identifying, service demographic and health related information can be provided.

2. Provision of PHI to determine benefits:

- The HHS HIPAA Privacy Rule, 45 CFR §164.512 (k) (1) (ii) states “A covered entity that is a part of the Department of Defense ... may disclose the protected health information of an individual who is a member of the armed forces upon separation or discharge of the individual from military service for the purposes of the determination by Department of Veterans Affairs (DVA) of the individuals eligibility for or entitlement to benefits under laws administered by the Secretary of DVA.” The DoD presently utilizes this provision to send such data to the DVA on a periodic basis upon separation.
- The HHS HIPAA Privacy Rule, 45 CFR § 164.512 (k) (1) (iii) “a covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.” Thus the VHA can share PHI in its possession with other DVA, including the Veterans Benefits Administration (VBA) components to support eligibility and benefit determinations for these service members.
- The HHS HIPAA Privacy Rule, 45 CFR §164.508 allows for PHI to be shared when an individual signs a valid HIPAA-compliant authorization granting permission to a covered entity to share their data with another specified covered entity. This would allow service members, if they so desire, to provide DVA with their personal health data prior to separation for purposes of determining eligibility for

benefits. To facilitate the early determination of benefits by DVA/VBA, DoD requires the use of a HIPAA-compliant authorization to allow disclosure of PHI.


- Veterans Support/Service organizations such as the Disabled American Veterans (DAV) and Veterans of Foreign Wars (VFW), to name two of many, often request PHI of hospitalized service members to help these individuals identify and apply for DVA benefits they are entitled to receive. In order for DoD facilities to provide information to these non-government groups, a HIPAA compliant authorization must be initiated by the individual service member. These groups have no direct right to receive PHI.

3. Provision of data as required by law:

- The HHS HIPAA Privacy Rule, 45 CFR §164.512 (a) (1) states that "a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." A TMA Privacy Office and Office of General Counsel review determination would need to be made to determine whether the sharing in question falls within the scope of the provided authority.

Please distribute this information to your Military Treatment Facilities and Support Offices, so we can ensure the Military Health Service is in compliance with the law and provides information only when appropriate.

If further information is needed for clarification of this issue, please contact me at (703) 681-6077 or sam.jenkins@tma.osd.mil.


Samuel P. Jenkins
Privacy Officer
TMA Privacy Office